REMARKS

Claims 2-18, 20-32, 34, and 35 are currently pending in the subject application and are presently under consideration. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

I.   **Rejection of Claims 2-3, 7-18 Under 35 U.S.C. §102(e)**

Claims 2-3, 7-18 stand rejected under 35 U.S.C. §102(e) as being anticipated by Paatelma (US 6,463,042). Withdrawal of this rejection is respectfully requested for at least the following reasons. Paatelma does not teach or suggest each and every element of the subject claims.

> For a prior art reference to anticipate, 35 U.S.C. §102 requires that "*each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

Briefly, the Examiner has failed to meet the requirement set forth in 35 U.S.C. §102 that *each and every element* set forth in the claim[s] is found in a single prior art reference. In particular, there are 29 words included in independent claim 2 (and all claims that depend there from) that are not addressed by the Examiner. These 29 words are part of the claims, contribute to defining the metes and bounds of the claims, represent elements applicant considers part of some aspects of his innovations, and, moreover, recite features that are neither taught nor suggested by Paatelma. In particular, independent claim 2 recites:

> a power control module coupled to the transmitter, the power control module receives a data packet having a first portion and a second portion and transmits the first portion at a first transmission power and the second portion at a second transmission power, *the communication unit transmits the first portion of the data packet at a first data rate and the second portion of the data packet at a second data rate*.

The Examiner has provided no analysis with respect to the last 29 words (indicated in bold type). For example, see Office Action mailed April 3, 2007, at page 3. See also Final Office Action mailed August 1, 2007, at page 2. In both instances, the Examiner ends examination of the claim at the words "…second transmission power." Accordingly, it is readily apparent that the Examiner has rejected this claim without considering **each and every element** of the claim, and without examining the claim in its entirety. In particular, nowhere in the Examiner's Replies are the elements, "the communication unit transmits *the first portion of the data packet at a **first data rate** and the second portion of the data packet at a **second data rate***" considered by the Examiner, much less rejected under 35 U.S.C. §102 based upon teachings of Paatelma.

Applicant's representatives have, over a long period of time, requested that the Examiner consider the entire claim rather than citing Paatelma as grounds to reject only a portion of the recited elements. Such a request is no more than what is required under 35 U.S.C. §102, yet the Examiner refuses. With all due respect to the Examiner, it should be noted that the Examiner has not considered each and every element of the claim much less provided rational grounds for rejection of those parts not considered. Yet, when this "argument" is presented, it is dismissed as unpersuasive. (*See* Advisory Action mailed November 13, 2007 at page 2). Applicant's representative submits that the burden of persuading the Examiner to meet the requirements of 35 U.S.C. §102 does not fall upon the applicant, thus the Examiner cannot posit this "argument" is not persuasive.

Moreover, turning from statutory requirements to the actual claim language, while the Examiner presents no arguments to the contrary, applicant's representative have repeatedly commented on Paatelma's shortcomings with respect to elements recited in the claims. To reiterate, independent claim 2 recites, "the communication unit transmits *the first portion of the data packet at a **first data rate** and the second portion of the data packet at a **second data rate**.*" Paatelma is utterly void of any teaching or suggestion relating to data rates. Rather, Paatelma discusses power levels, but discloses nothing regarding data rates. The Examiner has set forth the argument that Paatelma teaches transmitting portions of a data packet at different ***power levels***, while tacitly omitting from any grounds for rejection any claimed features relating to ***data rates***. Paatelma does

not teach the communication unit transmits *the first portion of the data packet at a **first***
data rate** and the second portion of the data packet at a **second data rate, nor does the
Examiner argue to the contrary, which is a *de facto* demonstration that Paatelma is
materially deficient to anticipate the subject claims.

Most particularly, applicant does not dispute that Paatelma teaches, "the Header
portion of the slot is transmitted at normal ***power*** while the remainder of the slot is
transmitted at a reduced ***power*** level relative to the Header portion" (*see* Paatelma, col. 4,
ll. 63-65). Rather, applicant's representatives has noted that these (or any other) portions
of Paatelma do not teach or suggest transmitting *the first portion of the data packet at a*
first data rate** and the second portion of the data packet at a **second data rate.
Therefore, it is requested that the Examiner cite portions of Paatelma that disclose
transmitting portions of a data packet at different ***data rates*** as articulated in the subject
claims or withdraw this rejection forthwith.

II.   Rejection of Claims 9-17 and 32 Under 35 U.S.C. §103(a)

Claims 9-17 and 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable
over Paatelma (US 6,463,042) in view of Fisher, *et al.* (US 5,768,695, hereinafter
referred to as "Fisher"). This rejection should be withdrawn for at least the following
reasons. Neither Paatelma nor Fisher, either alone or when combined, teach or suggest
all the claimed features.

In particular, claims 9-17 depend either directly or indirectly from independent
claim 2, which is believed to be allowable over Paatelma. The addition of Fisher, which
relates to a user-programmable device for configuring of ramp-up and ramp-down control
signals for a radio based upon certain timing sequences (*see* Abstract), does not cure the
deficiencies extant in Paatelma with respect to independent claim 2. Accordingly, this
rejection of dependent claims 9-17 should be withdrawn.

Regarding independent claim 32, the claim recites, "means for determining the
transmission power levels of the first and second portion ***based on a desired***
transmission range *for both the first and second portion*", which is neither taught nor
suggested by Paatelma, Fisher, or any suitable combination thereof. At page 9 of the
Office Action, the Examiner argues "Paatelma inherently teaches the processor

evaluating a range from the transmission", citing column 2, lines 36-45. Applicant's representative rejects this contention, as Paatelma neither expressly nor inherently teaches evaluating suitable transmission ranges. At the portions of the reference indicated, Paatelma simply notes that the header portion is transmitted at a higher power level than the data portion *when the data portion contains invalid data* (*e.g.*, so the receiver can save power by ignoring the invalid data). Moreover, even if Paatelma did inherently teach evaluating suitable transmission ranges, there is nothing to suggest the reference employs the desired transmission range for determining the transmission power levels.

Furthermore, Paatelma provides for a data portion that has a *lower* power level and therefore a *smaller* transmission range, whereas transmission range difficulties occur because the transmission range of the data portion is smaller than the transmission range of the header portion because header portions are typically transmitted at a lower data rate. Thus, as applied to the claimed subject matter, the method of Paatelma further compounds this difficulty in that the data portion of a packet will have a smaller transmission range not only due to a higher data rate but also because Paatelma *reduces* the power level. For at least this reason, it is readily apparent that transmission range is neither contemplated by nor a concern of Paatelma, and thus cannot be an inherent feature as the Examiner suggests. Rather, Paatelma's method expressly teaches away from the argument of inherency with respect to the Examiner's analysis (*e.g.*, the Examiner argues Paatelma inherently considers transmission ranges, yet for this argument to be germane, Paatelma would have to at least teach that the power level for the data portion is increased, not decreased as disclosed). Fisher does not remedy these shortcomings. Accordingly, this rejection should be withdrawn.

III.   Allowable Subject Matter

Applicant kindly thanks the Examiner for acknowledging that claims 20-31 and 35 are allowable, as well as the indication that claims 4-6 and 34 would be allowable if cast in independent form. Based upon the comments *supra*, it is believed that all claims are in condition for allowance, thus, claims 4-6 and 34 are not presently being recast in independent form, however, applicant reserves the right to do so at a later time.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063[TELNP200US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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